

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EDWARD SMITH,)	CASE NO. 1:21-cv-941
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
v.)	<u>NOTICE OF VOLUNTARY</u>
)	<u>DISMISSAL UNDER FED.R.CIV.P.</u>
THE CLEVELAND CLINIC)	<u>41(a)(1)(A)(i), WITHOUT PREJUDICE</u>
FOUNDATION, et al.)	
)	
Defendants.)	

Plaintiff, by and through undersigned counsel, and pursuant to Fed.R.Civ.P. 41(a)(1)(A)(i), hereby provides notice to the Court and all parties as to the dismissal of this matter, *without prejudice*. Pursuant to Fed.R.Civ.P. 41(a)(1)(A)(i), Plaintiff retains the right to voluntarily dismiss his claims without a court order, “before the opposing party serves either an answer or a motion for summary judgment.” Defendants have filed neither in this action.¹

On point, the Sixth Circuit has “taken [Rule 41(a)(1)(A)(i)] at face value” and assumed that it “ ‘**means what it says.**’ ”² Specifically, “Unless a defendant has filed an answer or summary judgment motion, the governing provision is Rule 41(a)(1). Defendants who desire to prevent plaintiffs from invoking their unfettered right to dismiss actions under Rule 41(a)(1) may do so by taking the simple step of filing an answer.”³ Moreover, “Rule 41(a)(1) explicitly leaves the option to dismiss in the plaintiff’s hands; once [a] plaintiff gives his notice, the lawsuit is no more.”⁴

¹ See *e.g. Brewer v. Wal-Mart, Inc.*, 2010 WL 2653646 (N.D. Ohio) (Court held that voluntary dismissal by the plaintiff under Fed.R.Civ.P. 41(a)(1)(A)(i) was appropriate after defendant filed a Rule 12(b)(6) motion to dismiss, but no answer.).

² *Ames v. Ethicon Endo-Surgery, Inc.*, 2012 WL 215234 (W.D. Tenn.) citing *Aamot v. Kassel*, 1 F.3d 441, 444 (6th Cir. 1993). (**Emphasis** added).

³ *Ames* @ *1 citing *Aamot*, 1 F.3d @ 444 quoting with approval *Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977).

⁴ *Id.*

So Ordered.
/s/ Patricia A. Gaughan
6/10/21